

**IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA**

**IN RE:** : SUPREME COURT OF PENNSYLVANIA  
: 118 M.D. MISC. DKT. 2005  
**THE TWENTY-FOURTH STATEWIDE :**  
**INVESTIGATING GRAND JURY :** DAUPHIN COUNTY COMMON PLEAS  
: NO. 320 M.D. 2005  
:  
: NOTICE NO. 36

**TO THE HONORABLE BARRY F. FEUDALE, SUPERVISING JUDGE:**

**REPORT NO.**

We, the members of the Twenty-Fourth Statewide Investigating Grand Jury, based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act regarding conditions related to public corruption as defined in the Investigating Grand Jury Act, and proposing recommendations for executive and administrative action in the public interest, with not fewer than twelve concurring, do hereby adopt this Report for submission to the Supervising Judge.

\_\_\_\_\_  
Foreperson – The Twenty-Fourth  
Statewide Investigating Grand Jury

DATED: \_\_\_\_\_, 2007

## **I. INTRODUCTION**

We, the members of the Twenty-Fourth Statewide Investigating Grand Jury, have conducted an investigation of possible violations of law by individuals during the marketing and sale of the former Haverford State Hospital property by Haverford Township from approximately September of 2002 through 2004. Our investigation was initiated as a result of a wide ranging referral received by the Office of Attorney General, on November 17, 2004, from the Delaware County District Attorney's Office. The Delaware County District Attorney's Office initiated an investigation into an array of alleged illegality that primarily focused upon the sale of the former Haverford State Hospital property. During the course of the District Attorney's investigation, information was developed that necessitated a referral to the Office of Attorney General due to the potential for a conflict of interest.

In September 2002, the Commonwealth of Pennsylvania sold the former Haverford State Hospital property, consisting of approximately 212 acres, to Haverford Township. This was a unique and valuable piece of real estate. It contained over 135 acres of undeveloped open space. The property is ideally situated in southeastern Pennsylvania, in proximity to metropolitan Philadelphia and the region's major transportation avenues. Indeed, Route I-476 actually passes through a portion of the property. The property was purchased for a very modest sum by the Township with the agreement that at least 120 acres of the property would be reserved for passive recreational public uses. The acquisition and potential development of this site presented an arguably unprecedented opportunity for the residents of Haverford Township and of the entire region.

In the several years following the acquisition of the property by the Township, significant disputes and apparent improprieties arose among the public officials of Haverford Township.

Allegations were made, by township commissioners, as well as members of the public, that public officials were engaged in crimes, such as bribery, theft and criminal conspiracy, in contracting for the development of this property. This Grand Jury undertook this investigation to determine what, if any, violations of law occurred by the public officials and/or private citizens involved in the initial attempt to develop this property following its purchase by the Township. In those instances where we have found criminal conduct, and have been able to identify the person responsible for it, we have recommended the initiation of criminal proceedings, consistent with our duty, through the issuance of an investigating grand jury presentment. Additionally, where the Grand Jury was able to uncover facts and circumstances that amounted to non-criminal misconduct we have endeavored to delineate those occurrences in the text of this report. We believe it is important that the facts associated with this matter be presented to the general public, and particularly the taxpayers of Haverford Township.

It is well recognized that representative democracy is dependant upon our governing bodies engaging in public deliberation of proposed actions and expenditures. Governmental action, unnecessarily hidden from the citizenry, undermines the very foundation of effective democracy. Our investigation has revealed a consistent pattern of activity, in 2003 and 2004, by certain public officials in Haverford Township who ignored their duty to keep the public and their fellow elected officials informed about official actions. These township officials intentionally chose to operate in secret in order to insure that the development of the valuable Haverford State Hospital site would remain closely within their control. Other township officials, while aware of these secretive measures, chose to remain ignorant of their details and silent about the misconduct. This Grand Jury investigation has determined that the root cause of this misconduct was not private pecuniary gain, but private political ambition. The Grand Jury

has also found that many of the statutes designed to protect the public's right to be informed of governmental actions, such as the Sunshine Act, are illusory and fail to adequately protect the public.

The Grand Jury has reviewed extensive evidence in this investigation. We received evidence of the Township sale and marketing of the Haverford State Hospital property from participants involved in all aspects of that process between 2002 and the end of 2004. Witnesses have included, but not been limited to: Haverford Township Commissioners; Haverford Township officials; representatives of developers who submitted development proposals for the former Haverford State Hospital property; and, attorneys from the law firm of Obermayer, Rebmann, Maxwell & Hippel. The Grand Jury also heard extensive testimony from investigators with the Office of Attorney General regarding their investigatory finding and interviews. The Grand Jury also reviewed extensive video and audio tape of Haverford Township's Board of Commissioners meetings during the period in question.

## **II. GOVERNMENT OF HAVERFORD TOWNSHIP AND THE LAWS PERTAINING THERETO**

### **A. Applicable Laws**

Haverford Township is governed by local laws which can be found in the Haverford Township Code. The Code is made up of the Home Rule Charter (hereinafter: HRC) which was approved on April 27, 1976 and sections dealing with Administrative and General Legislation (hereinafter: LEG) that were effective on July 12, 1986. In addition, Haverford Township is governed by state laws including *inter alia* The First Class Township Code (hereinafter: TC) – 53 P.S. § 55 101 *et seq.*, and The Sunshine Act – Title 65 Pa. C.S.A. § 701 *et seq.*

**B. Township Government**

Local law provides that the form of government in Haverford Township shall be a Commissioner/Manager form (HRC § 106). The legislative powers of Haverford Township are exclusively vested in the Board of Commissioners (HRC § 104). The Board of Commissioners is comprised of nine members elected from representative districts, also known as wards (HRC §§ 201-202, and 53 P.S. § 55503). Commissioners serve for a four-year term (HRC § 207). Commissioners must be registered voters of the township (53 P.S. § 55503). Commissioners must be a resident of the ward represented, and must retain such status during the term of office (HRC § 204). The office of Commissioner shall be forfeited if he is declared by any Court in the Commonwealth to lack any qualifications for office (HRC § 206).

**C. Township Manager**

The Board of Commissioners shall have the power to create, by ordinance, the office of Township Manager, and to regulate the powers, duties, term of office and compensation (53 P.S. § 56504). The Board, by a majority vote, shall appoint a Township Manager who shall be a full-time employee to serve under terms established by the Board (HRC § 501). The Manager may be removed from office at any time by a majority vote of the Board (HRC § 503). The Township Manager shall be the Chief Executive Officer, and his powers and duties include the duty to prepare and submit to the Board proposed budgets of the township and is responsible for administration of the budgets.

**D. Township Solicitor**

Legal matters of the township shall be under the superintendence, direction, and control of the Township Solicitor. No official, or official body of the township, shall employ an additional counsel without the assent or ratification of the Board of Commissioners (53 P.S. §

56203). The Board, by a majority vote, shall appoint a Township Solicitor who shall serve at the pleasure of the Board with compensation to be set by the Board. The Solicitor shall serve as the legal counsel for the township government, including the Board, the Manager and other officers. The Solicitor shall represent the township in all legal proceedings. It is the intent of the township charter that only one person shall be the legal advisor of the township, and that the Board may authorize temporary assistants for special purposes from time-to-time (HRC § 608). The Township Solicitor shall provide legal opinions, attend Board meetings, and litigate all legal actions and claims, except those cases in which other legal counsel is retained. The Solicitor shall approve for legality all contracts, agreements or other legal documents executed by authorized township officials (LEG § 4-305).

**E.     Director of Finance**

The Township Manager, with the approval of the majority of the Board, shall appoint a Director of Finance to supervise, in cooperation with the Manager, the financial administration of the township. The Board of Commissioners shall provide in The Code procedures for the receipt, deposit and accounting for all monies due and received by the township (HRC § 706). It is the duty of the Director of Finance to collect and receive all monies due or receivable by the township. He shall deposit monies in depositories authorized by ordinance (LEG § 4-412).

**F.     Annual Audit**

The Board of Commissioners shall provide for an independent annual audit of township receipts, expenditures, accounts and reports by a Pennsylvania Certified Public Accountant or firm having no personal interest in the fiscal affairs of the township or any of its elected or appointed personnel. The Board may provide for more frequent audits at its discretion. A

summary of the annual audit shall be published at least once in a newspaper of general circulation in the township within sixty days after the close of the fiscal year (HRC § 710).

**G. Township Contracts**

Townships may make contracts for lawful purposes (53 P.S. § 56801). All contracts must be approved by a public vote of the Commissioners. Contracts or purchases made by a township for professional services shall not require advertising or bidding (53 P.S. § 56802). The Township Manager may make contracts for all lawful purposes. Any officer authorizing any contract to be made in violation of this provision shall be subject to removal from office and liable to the township for any loss incurred as a result of such action. The Manager shall execute all contracts on behalf of the township, except that authorization for contracts for the sale or use of real estate shall be signed by the President of the Board, as well as the Manager. The Township Manager shall have the authority to execute purchases and contracts with a value of less than \$10,000. Purchases and contracts with a value of \$10,000 or more may be authorized by the Township Manager only after approval by a public vote of the Board of Commissioners (LEG § 4-1008).

**H. Sales of Township Real Estate**

No real estate owned by a First Class Township shall be sold for an amount “in excess of one thousand five hundred dollars except to the highest bidder after due notice by advertisement for bids or advertisement of a public auction in one newspaper of general circulation in the township.” (53 P.S. § 56501(II)) The advertisement must be published at least ten days before the date advertised for the opening of bids or the auction. All bid openings and awards of contracts for Township real estate shall be conducted at public meetings of the Board of Commissioners. All auctions of township real estate shall be public. The Commissioners have

the authority to reject any bids if they are deemed to be below the fair market value of the real estate.

**I. Commissioner Compensation**

Compensation of the Haverford Township Commissioners is set at \$3,000 per year. Commissioners shall be authorized to receive reimbursement of reasonable expenses actually incurred in the performance of their duties in accordance with regulations set forth in the Township Code (HRC § 211). The Board of Commissioners are authorized to receive reimbursement of reasonable expenses actually incurred in the performance of their duties, and shall not exceed \$50 per month (LEG § 4-213).

**J. Township Meetings**

The Board of Commissioners shall meet regularly and no less than once a month. The calendar of regular monthly meetings for the year shall be designated and advertised at the first meeting of the year. The Board shall adopt rules and regulations for its meetings which shall be designed to assure full and equal participation in deliberations of the Board by all of its members. All meetings of the Board, at which official actions are taken, shall be open to the public, and public notice of such meetings shall be given (HRC § 213, and LEG § 4-204).

A majority of the members of the Board shall constitute a quorum. The Board shall conduct no business except in the presence of a quorum (HRC § 215, and LEG § 4-206). All actions of the Board shall be taken by the adoption of an ordinance, resolution or motion (HRC § 216). The Township Secretary shall maintain a written record of the minutes and proceedings of all meetings of the Board. Copies of the minutes and actions of the Board shall be available to the public (HRC § 217).



The Board shall protect and promote the right of the citizens of Haverford Township to participate in a positive and constructive manner in the government of the township. Any qualified citizen of the township may attend and be heard at public meetings of the Board, and may address suggestions to the Board and others to provide guidance for their actions (HRC § 901). The presiding officer at Board meetings shall announce all decisions of the Board (LEG § 4-207).

**K.     The Sunshine Act**

The Pennsylvania Sunshine Act, Title 65 Pa. C.S.A. § 701 *et seq.*, attempts to provide guidance regarding the nature and conduct of public meetings in Pennsylvania. The preamble to the Act provides that:

The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

(65 Pa. C.S.A. § 702)

The Act requires that: "Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public..." (65 Pa. C.S.A. § 704). The term "agency" includes any Board or commission of any political subdivision of the Commonwealth, including a township. The term "official action" includes decisions on Board business made by a Board of Commissioners, and/or the vote taken by the Board on any motion, proposal or resolution. The term "deliberation" includes the discussion of Board business held for the

purpose of making a decision. A “meeting” is defined as a pre-arranged gathering of a Board which is attended, or participated in, by a quorum of the members of the Board held for the purpose of deliberating Board business or taking official action (65 Pa. C.S.A. § 703). During Board of Commissioner meetings, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy, must be publicly cast and, in the case of role call votes, recorded (65 Pa. C.S.A. § 705).

The Board of Commissioners may hold an executive session for various reasons including to consult with its attorney. The executive session may be held during an open meeting, or at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting immediately prior to, or subsequent to, the executive session. Members of the Board of Commissioners shall be notified twenty-four hours in advance of the time of the convening of the executive session specifying the date, time, location and purpose of the executive session. Official action on discussions held pursuant to an executive session shall be taken at an open meeting. An executive session shall not be used as a subterfuge to defeat the purpose of § 704 relating to open meetings (65 Pa. C.S.A. § 708).

The Board of Commissioners shall provide a reasonable opportunity at each advertised regular meeting, and advertised special meeting, for residents or for taxpayers to comment on matters of concern, official action or deliberation which are, or may be, before the Board prior to taking official action (65 Pa. C.S.A. § 710.1).

The only remedy encompassing all violations of the Sunshine Act is a right by citizens to seek injunctive relief before certain courts with jurisdiction over the matter. If a citizen prevails in this lengthy and expensive process, attorneys’ fees can be awarded, in the discretion of the

Court, to the citizen. Likewise, if the citizen fails to obtain injunctive relief, attorneys' fees on behalf of the governing body or agency can be awarded against the citizen.

The Sunshine Act provides that any member of any Board of Commissioners "who participates in a meeting with the intent and purpose by that member of violating" the provisions of the Sunshine Act commits a summary offense and shall, upon conviction, pay a fine not exceeding \$100 plus costs of prosecution (65 Pa. C.S.A. § 714).

### **III. FINDINGS OF FACT**

#### **A. Purchase of Haverford State Hospital Site**

On September 10, 2002, Haverford Township, through the actions of its Board of Commissioners ("the Board"), purchased the site which had been occupied by Haverford State Hospital ("HSH") from the Commonwealth of Pennsylvania. Haverford Township paid \$3 million for the HSH site, which consisted of approximately 200 acres. It was the intention of the Board to utilize the site for the preservation of open space, recreation areas and sports fields, and residential development, which would provide additional tax revenue for the Township. Therefore, the Board sought to sell a portion of the site to a developer. Initially, the Board sought to market the site without the assistance of an outside broker or agent. Although the Board received a few bids, there was no sale of the site by the end of 2002.

During the months of September 2002 through December 2002, the Board was divided into two factions, which were aligned more by personal factors than by political party. The majority faction consisted of Commissioners James McGarrity, Rob Trumbull, Joe Kelly, Mary March and Kenneth Richardson. The minority faction Commissioners were Fred Moran, George Twardy, Carol McDonald and Carolyn Parker. In January 2003, the faction composition was altered when Commissioner Kelly reversed his allegiance, joining the

Twardy/Moran/McDonald/Parker group. With the addition of Kelly, that group became the majority faction. According to Kelly, the political maneuvering which led to his switching factions involved a deal in which he would be named Council President, and attorney Leo Sereni, a close friend of Kelly, would become the Township Solicitor. The new majority fulfilled the terms of that deal in January 2003. Kelly became the President, and Sereni the solicitor.

**B. Hiring of Attorney Jeffrey Rotwitt and the Obermayer Law Firm**

In early January 2003, Twardy spearheaded an effort of the new majority faction to hire a consultant to facilitate the sale of the HSH site. Initially, Twardy contacted Attorney Marty Weinberg, who was a partner at the law firm of Obermayer, Rebman, Maxwell and Hippel (hereinafter: Obermayer), a Philadelphia law firm, to discuss seeking the assistance of Obermayer in the sale of the HSH site. Twardy's motive in selecting the Obermayer firm was primarily political in nature. Although Twardy knew that Obermayer was a very reputable firm, he admitted that his selection of that firm was motivated by political concerns, specifically, the enhancement of his own political status, and advancement of his own political career, within the Delaware County Republican Party.

As detailed during his testimony, Twardy felt that because he was originally from Philadelphia, he was considered an outsider, or interloper, by those who maintained political power and control in Delaware County. In Twardy's view, his county-wide political reputation would be greatly elevated, and his political stock would significantly rise, if he was perceived as the politician who directed a successful effort to sell and develop the HSH site. If he was able to accomplish that, and at the same time exclude his political rivals from the process, Twardy envisioned that their political power would in some fashion be diminished. It was that political

ambition, rather than the interests of the taxpayers, which guided Twardy's actions throughout the events concerning the sale of the HSH site.

Twardy approached Weinberg, of Obermayer, because he did not trust Delaware County law firms. According to Twardy, that lack of trust was due to his perception that the Delaware County law firms were politically aligned with his political rivals in Delaware County. When Twardy contacted Weinberg regarding the HSH site sale, Weinberg advised Twardy that attorney Jeffrey Rotwitt, an Obermayer partner, would be able to assist in the HSH site sale. Twardy then informally discussed the hiring of Rotwitt with the majority Commissioners faction, and thereafter arranged a dinner meeting with Rotwitt and Weinberg at the Pyramid Club, a restaurant in Center City Philadelphia. Twardy, majority faction Commissioners Moran, McDonald and Kelly, and solicitor Sereni, attended that dinner meeting, which occurred on February 27, 2003. None of the minority faction commissioners were informed of, or invited to, the dinner meeting. During the meeting, there was a discussion regarding the Township hiring Rotwitt and Obermayer as consultants to assist in the sale of the HSH site. When Rotwitt told the Township representatives that his hourly rate was \$400, he was informed that the Township would not be able to pay him at that rate.

After the Pyramid Club meeting, Twardy met with Rotwitt, Weinberg, and Thomas Leonard, another Obermayer attorney, to explore an alternate fee arrangement. It was ultimately decided at that meeting that Rotwitt and Obermayer would agree to represent the Township in the HSH site sale, based upon the following terms: the Township would pay a monthly retainer of \$7,500, plus out of pocket expenses; Obermayer would receive 6% of the gross receipts of the sale at the time of settlement; and the total of the \$7,500 monthly payments would be deducted from Obermayer's 6% proceeds of the sales price. Once again, none of the minority faction

commissioners were aware of this meeting. Further, Twardy had no authority to negotiate or make a deal with Obermayer. However, Twardy felt confident in doing so, since he knew that the other commissioners in his faction would vote to approve the deal.

The minority faction commissioners only became aware of the plan to hire Rotwitt and Obermayer when Rotwitt appeared at the March 10, 2003 Board meeting, ostensibly to make a pitch to the Board to hire Obermayer as a consultant in the site sale. Rotwitt's presentation was essentially a charade, since the majority Board faction was fully apprised of, and had acceded to, the terms described above. During that Board meeting, minority faction commissioners requested a delay on the vote to hire Rotwitt and Obermayer, in order to further explore the qualifications of Rotwitt, and to consider other possible candidates to be hired as a consultant for the HSH site sale. That minority faction request was voted down (5 to 4) by the majority faction, which then voted to hire Rotwitt and Obermayer. Twardy admitted that he did not want the vote delayed, because he feared that a delay may have enabled the minority faction to obtain a consultant at a better price. That, of course, would thwart Twardy's plan to manipulate the process to his own political advantage. It was that political motivation which caused Twardy to secretly meet with Rotwitt and Obermayer and reach an agreement without minority participation, or public exposure. A "Fee Agreement", which included the aforementioned financial arrangements and detailed the services Rotwitt and Obermayer would provide as consultants, was signed by Michael English, the Township Manager, and Kelly, the Board President, on April 1, 2003. The fee agreement further specified that the agreement would remain in effect until the end of January, 2004. While a vote to retain Rotwitt and Obermayer as consultants occurred on March 10, 2003, the actual written terms of the Fee Agreement were never reviewed or voted upon at a public meeting.

**C. Request for Proposals for the HSH Site Sale**

After Rotwitt and Obermayer were officially approved as consultants, Rotwitt forwarded Requests for Proposals (hereinafter: RFP) to several developers. The RFP solicited proposals for the purchase and development of the HSH site. Approximately 20 proposals were submitted by developers to the Board. In non-public meetings, the Board winnowed the number of proposals to 9, which were presented publicly during the September 2003 Board meeting. During the time the proposals were being submitted to, and considered by, the Board, various developers contacted Board members to obtain information that would be beneficial to the developers in formulating plans which would best suit what the Board sought to accomplish with the sale and development of the site. The developers also contacted the Board members to lobby them in support of their proposals. The lobbying of the Board members was not limited to the developers. Several persons in political positions also lobbied Board members on behalf of some of the developers. All of this was done outside the scope of public scrutiny.

Twardy decided during the proposal process that he would support the proposal submitted by one of the developers, Goldenberg/Pohlig (hereinafter: Goldenberg). Once again, Twardy's decision in that regard was based upon his own political ambitions. Twardy felt that Goldenberg was in no way connected with any of the major Delaware County political leaders. That was of paramount importance to Twardy, since he wanted the chosen developer to be beholden only to him, so he would be able to more directly control the development process. In fact, Twardy stated that if any of his Delaware County political rivals had contacted the Board in support of Goldenberg, he would have opposed the Goldenberg proposal. Therefore, Twardy, along with Moran, who also supported the Goldenberg proposal, went to great lengths to do everything possible to ensure that Goldenberg was the successful bidder. For example, Moran

and Twardy conducted a meeting, in Twardy's Philadelphia law office, with Mike Lawry, the Project Developer for Goldenberg. During that meeting, Twardy and Moran showed Lawry copies of the proposals submitted by other developers, and provided Lawry with additional information, such as the prices being bid by developers who were competing with Goldenberg to obtain the HSH site. Lawry was surprised that Twardy and Moran did this, since it was his understanding that the proposal process was supposed to be confidential. Twardy admitted that he supplied this information to Lawry in order to give Goldenberg an advantage in being in the best position to be the successful bidder for the development of the HSH site. On April 19, 2006, Moran submitted to a tape-recorded interview conducted by Office of Attorney General personnel. During that interview, Moran responded "no" when asked if he had any conversations with Goldenberg representatives prior to their bid being approved. That statement by Moran was false. Moran and Twardy also strongly vocalized their support for Goldenberg during the time when the Board discussed the various proposals.

The efforts of Moran and Twardy on behalf of Goldenberg bore fruit during the November 2003 Board meeting, during which, by public vote of the commissioners, Goldenberg was chosen as the developer for the HSH site. Essentially, the Goldenberg proposal which was accepted involved the purchase and development of "61 ±" acres of the HSH site, for a purchase price of \$30.6 million. \$5 million of that amount would be a down payment which would be due upon the signing of an Agreement of Sale and Purchase (hereinafter: Agreement of Sale), which would be drafted and finalized by the parties to the sale.

**D. \$600,000 Advance to Obermayer**

Despite the aforementioned Fee Agreement between the township and Obermayer, which provided that Obermayer would receive no payment, other than its \$7,500 per month return, until



the date of the closing of the site sale, Obermayer received a \$600,000 advance payment from the township on December 31, 2003. The subject of that payment was initially broached during a discussion in November 2003, involving Weinberg and Rotwitt, inside the Obermayer offices. Specifically, Weinberg asked Rotwitt about the status of the Township site sale, and was advised by Rotwitt that a vote on the developers' proposals was imminent. When Weinberg responded positively to that news, and stated that he expected that the firm would then receive its money soon, Rotwitt informed him that their fee involving the 6% of the sale proceeds would not be received until the final settlement, which could be years away. Weinberg then suggested that Rotwitt approach a Township representative to explore a method by which Obermayer could obtain an advance payment. The Obermayer attorneys sought to obtain a lump sum advance payment from the Township by the end of 2003, in order to be compensated for the time Obermayer attorneys had spent working for the Township. As explained by Weinberg and John Ryan, another Obermayer attorney who worked on the Township project, Obermayer's attorney's compensation is based, to a large degree, on the amount of "billable hours" worked by the attorneys' during the year. In order for the attorneys to be credited for the hours spent working on a case, the fees associated with those hours had to be received by the firm by the end of the year. As stated by Ryan: "Our compensation system is based upon how much money lawyers bring in the door in any calendar year.... It was of importance for me to get paid for my work". According to Weinberg, approximately 20 Obermayer attorneys had worked on the Township matter during 2003, and it was estimated that, by the end of 2003, approximately \$600,000 in billable time would be spent by the attorneys on the Township project. Weinberg, in explaining why the firm sought the \$600,000 payment, stated: "The amount of the work that was

being done, consistent with the size of our firm, was pretty tough to take without having to wait until the end of the entire thing to get paid.”

Rotwitt initiated the effort to obtain the \$600,000 during a telephone conversation with Twardy in early December 2003. Rotwitt’s approach was to link the request for an advance payment to the pending January 2004 expiration of Obermayer’s contract with the Township, and couch the request in the form of an incentive for Rotwitt and Obermayer to continue in their efforts to assist the Township, and remain involved in the process until the culmination of the sale and development plan. In reality, that approach was nothing short of a ruse, since Rotwitt and Obermayer had an overwhelming financial incentive to continue to work to facilitate the culmination of the sale to Goldenberg. If that sale did not reach settlement, Obermayer would not receive its 6% of the gross proceeds of the sale. Nonetheless, Twardy was agreeable to the \$600,000 payment, and told Rotwitt to contact Moran to work out the details of the payment. Twardy then informed Moran of his conversation with Rotwitt, and instructed Moran to make arrangements for the payment. Thereafter, sometime in mid-December 2003, a conference call among Moran, Ryan and Rotwitt was conducted regarding the \$600,000 payment. It was agreed that the \$600,000 payment would be paid from the proceeds of the \$5 million down payment from Goldenberg. It was anticipated that the down payment would be received by the Township by the end of December 2003.

During December 2003, the Obermayer attorneys prepared numerous drafts, and a final version of the Agreement of Sale between the Township and Goldenberg. The finalized Agreement of Sale contained a host of terms and conditions which needed to be fulfilled before the actual sale could be culminated. The number and scope of those conditions rendered the Agreement very contingent in nature, and effectively allowed wide latitude to the Township to

opt out of the Agreement. The Obermayer attorneys also prepared, during December, drafts and a final version of an Escrow Agreement, which provided that the \$5 million down payment from Goldenberg would be provided to Obermayer, which would serve as the escrow agent, and hold the down payment funds. All of the drafts, along with the final versions, of the Agreement of Sale and Escrow Agreement were provided to Sereni, the Township Solicitor, as the documents were generated. However, Sereni did not participate in the preparation of those documents, and did not even review any of the documents until the night of December 30, 2003, during the Board meeting at which the Agreement of Sale and Escrow Agreement were executed.

**E. December 30, 2003 Board Meeting**

Based upon a request from Moran and Twardy, Council President Kelly scheduled a special meeting of the Board for December 30, 2003, for the dual purposes of signing the HSH site Agreement of Sale and addressing the ward redistricting, both of which were controversial issues. The redistricting involved the drawing of the boundaries of the Township's political subdivisions, which are known as wards. Kelly called the meeting even though he knew that two of the minority faction Commissioners, McGarrity and Richardson, would be on vacation, and would not be able to attend the meeting. Thus, the only Commissioners present for the meeting were minority faction Commissioner Trumbull, and majority faction members Moran, Twardy, McDonald, Kelly, and Steve D'Emilio, who had replaced minority faction member Mary March on the Board. Carolyn Parker did not attend the meeting. Although Parker lost in the 2003 primary election to her opponent, Andy Lewis, Parker was still a Commissioner at the time of the December 30, 2003 meeting. Lewis would not be sworn in as a Commissioner until January 5, 2004. Lewis nonetheless appeared at the December 30, 2003 meeting to participate as a member

of the public. Solicitor Sereni, Township Manager English and Rotwitt also appeared at the meeting.

When the meeting commenced, it soon turned raucous, as there was an onslaught of heated questions raised by Trumbull and the public, including Commissioner-Elect Lewis, about the HSH site Agreement of Sale. A recess of the meeting was therefore taken, for the ostensible purpose of conducting an executive session in a back room to clarify various terms in the Agreement of Sale. The back room session was a chaotic event involving a simultaneous and discordant series of discussions among pairs or groups consisting of the Commissioners, Rotwitt, Sereni and English. The number and identity of those involved in the back room session was also fluid, since many of the individuals involved periodically left the room.

Rotwitt's primary purpose during the back room session was to continue his ruse to obtain the \$600,000 advance by representing it as the consideration he would require to continue working on behalf of the Township. This was his first opportunity to address a formal gathering of the Board. He was assisted in that regard by Moran, who praised Rotwitt's performance, and emphasized the importance of keeping Rotwitt involved in the HSH project until the time of settlement. Rotwitt would also need an extension of his contract, which was due to expire in January 2004, if he wanted to continue receiving the \$7,500 monthly retainer. While he was in the back room, Rotwitt also provided answers to some of the questions which had been posed about the Agreement of Sale. His answers were particularly beneficial to Sereni, who had failed to previously review the drafts and final version of the Agreement. Specifically, Rotwitt was able to demonstrate to Sereni how the agreement included language that had been previously requested by Sereni, which would give the Township, in Sereni's words, "the absolute right to walk away from the agreement". Rotwitt requested the \$600,000 advance during the back room

session, in discussions with majority faction Commissioners Moran, Twardy, McDonald and Kelly, who all appeared to be in agreement with it. Trumbull and D'Emilio were not made aware of the \$600,000 payment during the back room session. During the back room session, both the Agreement of Sale and the aforementioned Escrow Agreement were signed by Kelly, English and Sereni. There was no provision in the Escrow Agreement regarding the use of any part of the \$5 million down payment for any specific purpose. Rotwitt left the building prior to the actual public Board meeting being reconvened, assuming that the matter of the \$600,000 advance would be put to a vote. (Five of the six Commissioners in attendance were majority faction Commissioners.) Both Twardy and Kelly privately discussed with Moran bringing the \$600,000 advance to public vote before the meeting was reconvened. However, Moran instructed Kelly not to bring it up for a vote, because it was not on the public agenda. Kelly did as he was told. However, when the meeting was reconvened, Moran did bring up the matter of Rotwitt's contract, announcing during the public meeting that the contract, which was due to expire at the end of January 2004, would remain the same, and would be addressed during the January 2004 Board meeting. Specifically, Moran stated: "The Board has a consensus that his contract continue. His contract is exactly the way it is, no more money extended until the end. He will make \$7,500 a month. It all comes out of the 6 per cent. So that will be on the agenda and that way – so you all will get a chance to look at it and that will be it." Moran made no mention whatsoever of the \$600,000 advance.

The redistricting plan which was presented during the meeting had been designed by the Moran/Twardy majority faction. Its purpose was purely political, in that the ward boundaries were drawn in the manner that would be most beneficial to the majority faction Commissioners. That is, the geographic confines of the wards were drawn with the intention of including as many

likely pro-majority Commissioner voters as possible within the boundaries of the wards of those Commissioners, thus facilitating their re-election efforts. The minority faction Commissioners had no input into the design of the plan. As Commissioner McDonald stated: "It may not have been fair, sir, but it's the way redistricting apparently goes". McDonald characterized the configuration of the redistricting map as "a little unusual", noting that "there certainly were some jigs and jags".

Council President Kelly acknowledged that, in retrospect, it was unwise to call for a meeting which involved both the redistricting and the HSH Agreement of Sale. In consideration of the chaotic scenario discussed above, Kelly admitted that it was not a good meeting, and that he should have insisted on more order and control. According to Kelly, when the meeting reconvened, there was so much yelling and screaming, all he wanted to do was end the meeting. As to the timing of the meeting, Kelly denied that the impending swearing in of Commissioner-Elect Lewis as a Commissioner, and his anticipated participation in the January 2004 meeting, provided incentive for Kelly to schedule the meeting on December 30, 2003. As previously indicated, Lewis had unseated a majority faction member, and was considered an opponent of the majority faction.

**F. December 31, 2003 – The \$600,000 Payment to Obermayer**

At approximately 7:30 a.m., on December 31, 2003, Rotwitt, who assumed that the Board had voted on, and approved the \$600,000 advance, called Sereni and discussed sending a document, which would effectuate approval of the advance, to the Township to be executed. Sereni told Rotwitt to contact Township Manager English, and gave Rotwitt English's phone number. Rotwitt then called English to ascertain whether he would be in the office that day. English replied that he would be in the office, but would be leaving work at noon, since it was

New Year's Eve. At approximately 11:00 a.m., English received from Obermayer, via fax, a letter, with the heading "Fee Agreement – Haverford State Hospital", which contained an amendment to the original Fee Agreement between the Township and Obermayer. The amendment authorized Obermayer to take, as part of their fees, \$600,000 of the \$5 million down payment from Goldenberg, which Obermayer was going to receive that day. The letter contained a signature line for "Michael F. English, Township Manager", under a clause which stated: "The undersigned agrees to the terms and conditions of this letter on December 31, 2003". After receiving this document, English called Sereni, and read the document to him. Sereni then directed English to call either Kelly or Moran regarding the document. After unsuccessfully attempting to contact Kelly, English called Moran, and read the document to him. After hearing English read the document, Moran instructed English to sign it and fax it back to Obermayer. English then signed the document, and faxed it to both Obermayer and Moran. Later that day, Obermayer received the \$5 million, and retained \$600,000 of it. The receipt of the \$600,000 on December 31, 2003, fulfilled the Obermayer attorneys' desire to obtain the money by the end of the year. The \$4.4 million balance was later transferred to the Township.

**G. January 2004 Events**

On January 5, 2004, a public Board reorganization meeting was conducted. Sereni was reappointed as Solicitor during that meeting. No mention was made, by any Commissioner, of the \$600,000 payment during that meeting. The next regularly scheduled public Board meeting was held on January 12, 2004. During that meeting, Twardy made a motion to extend Rotwitt's contract, consistent with the pronouncement made by Moran in that regard during the December 30, 2003 meeting, without mentioning the \$600,000 payment. Twardy's motion sparked a heated debate, during which Commissioner Lewis made a motion that three amendments should

be made to the contract before it was extended. That motion was approved after input from Sereni, who agreed that the amendments should be made. Once again, no one mentioned the \$600,000 payment. Ironically, Moran, during the debate, stated that he hoped the amendments would "not cause (Rotwitt) to walk". (Although the amendments were approved, they never became part of the contract. Rotwitt refused to agree to a contract containing the amendments, and his contract extension was ultimately approved, without them, on April 19, 2004.) During their grand jury testimony, the Township officials who knew about, and failed to reveal, the \$600,000 payment offered various excuses for their failure. Twardy stated that he feared that if the payment was exposed, Rotwitt's contract would not be approved, and that would result in the \$30 million deal collapsing. English stated that he is an "at-will" employee, and feared that he would lose his job if he exposed the payment. Kelly stated that he was too embarrassed, and he assumed that the Township would be able to get the money back without the public being made aware of it. He further related: "I was hoping it was one of those things that goes away. You get the money back and you get interest on the money, and you live to fight another day." Sereni stated that he believed that the \$600,000 payment would be raised at the meeting, since a public vote was required by law. When it wasn't raised, Sereni did not mention it because he was not a Commissioner, and was reluctant to get in the middle of the dispute, because he served the entire Board. Moran, in his statement, related that he didn't bring up the payment because "it wasn't really important".

After the January 12, 2004 meeting, there were discussions among Sereni, English and Kelly regarding the propriety of the \$600,000 payment. Those discussions resulted in an informal meeting, in late January, at Moran's house, which included Moran, Kelly, McDonald and Sereni. During that meeting, Moran attempted to absolve himself of responsibility by



foisting the blame on English. As a result of that meeting, it was decided by Kelly, who was still the Board President, that the matter of the \$600,000 payment would be dealt with during the February 2004 public Board meeting.

Commissioner Lewis came to learn of the \$600,000 payment, in a chance fashion, during a casual conversation with Obermayer attorney Thomas Leonard, sometime after the January 12, 2004 Board meeting. That conversation occurred during a corporate board meeting, which was totally unrelated to any Township business. During that conversation, Lewis mentioned to Leonard that Obermayer was going to have a substantial time investment in the HSH project before it got paid. Leonard responded: "Oh, no. Jeff (Rotwitt) already got paid." Lewis was dumbfounded by that statement, and instructed Commissioner Richardson to investigate the matter. Richardson learned from George Rementer that only \$4.4 million of the down payment from Goldenberg had been received by the Township. When Richardson inquired as to the missing \$600,000, Rementer directed Richardson to English, who showed Richardson the aforementioned Fee Agreement amendment letter which authorized Obermayer to take the \$600,000.

There were two additional matters that were undertaken by Board members without the benefit of public vote, or exposure, during January 2004. The first of those two involved the hiring of an Obermayer attorney to represent the Township regarding the redistricting. Initially, it was Twardy and Moran who decided that they should hire outside counsel for the matter. Twardy therefore contacted Rotwitt, sometime prior to January 16, 2004, and expressed his desire to hire the Obermayer firm, albeit at a reduced rate. Twardy's dual reasons for hiring an outside counsel was to acquire expertise in the redistricting area, and Twardy's growing distrust of Sereni, who had previously indicated his opposition to the Moran/Twardy redistricting plan.

Thereafter, Twardy reached an agreement with Obermayer whereby they would represent the Township at a rate of \$150 per hour, which was less than the customary hourly rate. The \$150 per hour figure was identical to the amount the Township would have had to pay Solicitor Sereni if he were to represent the Township. The Obermayer firm commenced work on behalf of the Township on or about January 16, 2004. Sereni did not become aware of that hiring until he returned from vacation sometime around January 20, 2004. Sereni was upset about the hiring because it was accomplished without his approval, and a public Board vote, as required by law. At Sereni's urging, Board President Kelly scheduled a special Board meeting for January 22, 2004. The Obermayer hiring was then approved by a 5 – 4 vote at that meeting.

The second matter undertaken without a Board vote, in January 2004, was an expenditure of \$16,530 for the publication of the redistricting plan. As part of the redistricting process, publication is required by law. When English learned that the cost of publishing the plan in the Philadelphia Daily News would be \$16,530, he called Moran and informed him of that. Moran told English to await Moran's direction. Moran later called English, and informed him that he had approval of the majority of the Board, and that English should go ahead with the publication in the Daily News. In fact, that claim was false. Thereafter, the \$16,530 amount was paid through the issuance of two \$8,265 Township checks, on January 14, 2004, and two Township expense vouchers were prepared to document the expenditure. The plan was published in the Philadelphia Daily News on January 16, 2004. The same publication, in the Delaware County Times, would have been legally sufficient, and would have only cost approximately \$3,000. During the January 22, 2004 special Board meeting, after a heated discussion, the \$16,380 expenditure was ratified by a 5 – 4 vote. Prior to that vote, minority Board members objected to

the expenditure, since it was in excess of \$10,000, and was made without their knowledge and approval.

#### **H. February 2004 Events**

During the February 9, 2004 Board meeting, Commissioner Lewis, armed with the aforementioned information regarding the \$600,000 payment, made pointed inquiries of the assembled Township officials regarding whether any monies, other than the \$7,500 monthly retainer, had been paid to Rotwitt or Obermayer. When the Commissioners remained silent, he directed the inquiry to English, who also failed to divulge the \$600,000 payment. Once again, the Township officials offered excuses regarding their failure to disclose the payment during their grand jury testimony. Twardy stated that he “instinctively went into a shell”, and that he didn’t want to say anything, due to his fear that speaking about the payment would be politically detrimental to him. Sereni testified that he expected Moran to speak about the payment, and that he was enjoying the battle between the factions. English testified that he felt as if he was being set up as the “fall guy”, because Moran and Twardy had refused to respond to Lewis’ questions. In his recorded statement, Moran said he remained silent because the \$600,000 payment “wasn’t an issue to me”.

Following that meeting, Sereni, Moran and Twardy went to Rotwitt’s house to discuss having Obermayer return the \$600,000. Thereafter, when it became apparent that it would be impossible to have a majority of the Board vote to approve the \$600,000 payment, Obermayer returned the money to the Township on March 1, 2004. In Rotwitt’s view, the Township’s demand for the return of the money was an indication that he “had been betrayed - not knowingly - because of the knuckleheads, but they simply screwed up. They couldn’t correct

their screw up. I thought they had been culpable... I suffered for their mistake.” The \$600,000 payment was finally publicly revealed during the March 8, 2004 Board meeting.

**I. Other Commissioner Conduct**

During the course of our investigation, we also learned of additional conduct by Commissioners that bears noting. Most importantly, we received evidence regarding the misconduct of Moran pertaining to his expenses and his contact with a Goldenberg official. That conduct is addressed in a Presentment which recommends that criminal charges be filed against Moran. The contents of that Presentment are incorporated herein by reference.

Further, Commissioner Parker, from approximately September 2002 until December 2003, the end of her term as a Commissioner, resided in Florida. In order to maintain the Moran/Twardy majority in Board meeting votes, Moran purchased airline tickets for Parker, on eleven occasions, to enable her to travel to and appear at the Board meetings. Despite questions about her residency, no member of the board or citizens of the Township ever took formal steps to challenge her residency.

**J. Status of the HSH Sale and the Board**

At the time that our investigation concluded, on March 28, 2007, the HSH sale still had not reached settlement. Subsequent to the signing of the Agreement of Sale on December 30, 2003, a disagreement between the parties arose involving the actual amount of acres which were covered by the Agreement. Despite the monumental amount of legal firepower and hours involved in the drafting and completion of the Agreement, the acreage dispute could not be resolved without a revision of the initial terms. A subsequent Agreement of Sale involves 39.9 acres, and a price of \$17.5 million. Rotwitt and Obermayer no longer represent the Township.

The events surrounding this renewed attempt to sell the property were not within the scope of this jury's review. As such, this report cannot comment on the terms or manner of the current Agreement of Sale.

As our investigation ended, the Township Commissioners are: Steve D'Emilio, Mario Olivia, Robert Trumbull, Fred C. Moran, Andy Lewis, Larry Holmes, James McGarrity, Tom Broido, and Carol McDonald. Former Commissioners George Twardy, Joe Kelly and Kenneth Richardson lost their re-election bids in 2005. Michael English is still the Township Manager. Leo Sereni resigned his position as Township Solicitor in January 2007.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Conclusions**

1. The Grand Jury did not find evidence of bribery or other violations of the Pennsylvania Crimes Code by the Haverford Township Board of Commissioners, or its individual members, for their conduct in negotiating and executing an agreement of sale with developer Goldenberg.

2. The Grand Jury does find that certain public officials of Haverford Township ignored the applicable law pertaining to townships of the first class and their own governing charter throughout their pursuit of development for the Haverford State Hospital real estate.

3. The First Class Township Code required Haverford Township to advertise for public bid or public auction any township real estate for sale that has a value in excess of \$1,500. 53 P.S. § 56501. This statute was completely ignored by Haverford Township's public officials throughout the period of time addressed by this Report.

4. Development offers for the Haverford State Hospital property were repeatedly reviewed, discussed and eliminated outside of the scope of the public.

5. Commissioners Moran and Twardy circumvented any notion of an appropriate sale process for the Haverford State Hospital property when they secretly revealed the details of competitor purchase offers to developer Goldenberg.

6. In mid December of 2003, Commissioner Moran agreed, without the public's knowledge, to pay \$600,000 to Rotwitt from the \$5,000,000 down payment on the township property by developer Goldenberg.

7. On numerous occasions, Haverford Township officials intentionally lied or remained silent about the \$600,000 payment to the Obermayer firm for Rotwitt's services.

a. Commissioner Moran lied to the public at the December 30, 2003 meeting when he stated that Rotwitt's contract would be extended without any changes "or money extended until the end."

b. Commissioner Moran, Commissioner Twardy, Commissioner Kelly, Solicitor Sereni and Township Manager English failed to disclose their knowledge of the \$600,000 payment to Rotwitt at four public meetings (January 5, 2004; January 12, 2004; January 22, 2004; and, February 9, 2004) following the payment.

c. Commissioner Moran, Commissioner Twardy, and Commissioner Kelly, voted on a contract extension for Rotwitt on January 12, 2004, knowing that it did not include the substantial alteration of an early payment of \$600,000 by the township.

8. The solicitor repeatedly acted as if his clients were only the majority commissioners and not the township, its citizens and taxpayers.

9. The solicitor repeatedly failed to advise the Board of Commissioners, in private or in public, of the applicable laws and charter provisions that should have defined and limited the Board's conduct. Such failures included, but were not limited to:

- a) Not advising about the Board's failure to comply with § 56501 of the First Class Township Code governing the sale of real estate owned by a township.
- b) Not advising about the necessity to publicly disclose and vote upon all contracts entered into by the Township. For example, the written fee agreement with Rotwitt and Obermayer, was never disclosed to the full Board of Commissioners or the public and was never subject to a vote.
- c) Not advising the full Board of the necessity to publicly deliberate on the proposal to amend Rotwitt's contract and make a payment of \$600,000 to Rotwitt prior to the sale of the Haverford State Hospital property.
- d) Not advising the full Board of Commissioners that the decision to pay Rotwitt the \$600,000, prior to the sale of the Haverford State Hospital property, was illegal without public deliberation and a public vote by the Board.

10. The Solicitor repeatedly failed to advise the Minority Commissioners and the public about official actions being conducted in secret. Even under direct questioning at public meetings, the solicitor frequently failed to disclose either the law or facts material to the Township's interests.

11. The Solicitor failed to adequately review the Agreement of Sale and Escrow Agreement between Haverford Township and developer Goldenberg. Likewise, the Solicitor failed to require that these agreements be published to the full Board and the public and be voted upon at a public meeting.

12. Commissioner Moran intentionally subverted the law by facilitating Commissioner Parker's continued Board membership, from September 2002 until December 2003, notwithstanding the fact that she was no longer a resident of the Township.

13. The Sunshine Act fails to provide the adequate remedies and penalties required to ensure the people's ability to observe and evaluate the actions of public officials. The current criminal penalty is only a fine that cannot exceed one hundred dollars. The criminal penalty does not extend to all violations of the Sunshine Act, but only to violations occurring at a prearranged meeting attended by a quorum of the members. 65 Pa. C.S.A. § 714. This is a very narrow category of violations that fails to encompass a broad array of official actions that do not occur at a "meeting", as defined by the Sunshine Act. The Grand Jury found numerous instances where Haverford Township Officials failed to conduct deliberations and official actions at public meetings, without being liable for a criminal penalty. The only other remedy in the Act, injunctive relief through the courts, creates a burden on citizens for enforcement. The Sunshine Act is also deficient in failing to prohibit public officials from intentionally withholding material information about official actions or expenditures from citizens.

14. The Grand Jury is frustrated by the limitations of the Sunshine Act. Despite numerous violations of that Act in this case, the limited applicability of the criminal penalties foreclose effective prosecution of the violations.

15. Investigating these matters can require significant effort, as evidenced by the Grand Jury's work in this case. Law enforcement, with its limited resources and extensive responsibilities, is ill-suited for enforcement of the Sunshine Act, especially when the criminal penalty is limited to a fine of not more than \$100. Notwithstanding the express intent of the



Sunshine Act's preamble, the Sunshine Act, as currently structured, significantly raises form over substance.

**B.     Recommendations**

1.     The Legislature should significantly reappraise, clarify and strengthen the Sunshine Act. Civil and administrative enforcement provisions and penalties should be added to the Act. The applicability of criminal penalties should be broadened and strengthened. The Grand Jury recommends that the structure of Pennsylvania's Ethics Act should serve as a model for the legislature. Administrative enforcement of the Sunshine Act should be vested in the Pennsylvania Ethics Commission. Criminal penalties should be limited to the most egregious material violations of the Sunshine Act. The prohibitions of the Act should specifically encompass intentional misrepresentations by public officials and failures, by public officials, to disclose material facts about official actions, to the public.

2.     The First Class Township Code, as well as the other class township codes, should be amended by the Legislature to make clear that the fealty of township solicitors must be to the township, and its citizen taxpayers. This clarity in the statutes defining the duties of solicitors will eliminate any confusion that exists regarding the professional responsibilities and loyalty of township solicitors.

3.     The Township Manager and Finance Director should receive two-year written employment contracts. It is hoped that with the security of a contract, these officials will be able to monitor township expenditures in a more independent way without fear of retaliation or job loss.

4.     The results of all fiscal audits of the township should be reported by direct mail or posted on a web site.

5. Written policies should be adopted and enforced aggressively by Haverford Township as to what constitutes an appropriate Commissioner expense. All expenses submitted for payment should require completion of a written expense report detailing the nature of the expense as well as providing receipts, and should comply with the applicable Township Code and statutes.